

Remarks

After careful consideration of the outstanding Office Action, this application has been amended accordingly, and favorable reconsideration on the merits thereof is at this time respectfully requested.

The undersigned will consider the objections/rejections substantially chronologically, as set forth in the outstanding Office Action, for ease of consideration thereof by the Examiner. However, before doing so several comments are considered appropriate in view of the fact that "A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION." (See Office Action Summary.)

The undersigned and Examiner attempted to mutually cooperate with respect to arriving at a sound election and examination, but such having not occurred the undersigned questions whether the latter fact has prompted the one-month shortened statutory period for response when there is a Section 103 rejection of record. The undersigned responded on March 24, 2005 to the previous Office Action and it took more than two months for the Examiner to issue the Office Action of June 15, 2005. It would seem that if it requires two to three months for the Examiner to reply to Applicant, there is no reason for Applicant's time to be foreshortened to a single month. Quite honestly, it is virtually impossible to receive an Office Action, correctly log the Office Action properly to comply with ethical and legal requirements for both practical and insurance reasons, "marry" the Office Action to the file, order patents, analyze the Office Action, send the necessary materials latter-noted to Applicant, receive input from Applicant and provide an appropriate response within a single month!

Last but not least, the undersigned has reviewed the MPEP and there is no basis for setting a one-month shortened statutory period after setting forth for the first time a rejection on the merits of claims initially examined!

Turning to the Examiner's comments concerning the "Information Disclosure Statement" filed on October 21, 2003, the same does "comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the format of the publication dates **needs** to [sic] as --MM-DD-YYYY--." The "MM-DD-YYYY" notation appears under the heading "Publication Date" of Form 1449A-PTO utilized by Applicant for submitting Information Disclosure Statements. The Examiner's "complaint" appears to be the fact that Applicant submitted years as - YY - instead of - YYYY-. If such is the case, it is inherent from the previously identified dates and numbers that the years "01", "01", "02" and "03" mean, respectively, 2001, 2001, 2002 and 2003. Considering the succeeding 3 million, 4 million, 5 million, etc. numbered patents, the years "70", "86", "90", etc. are -- 1970 --, -- 1986 --, -- 1990 --, etc. Nothing in CFR 1.97/1.98 or Section 609 of the MPEP **requires** that the first "YY" of YYYY" be included when such is clearly **inherent** from all information of record.

Be that as it may, the undersigned has submitted herewith the identical Information Disclosure Statement originally filed containing all of the identical information with the only change being that the years - YYYY - have been totally completed. Accordingly, the Examiner is requested to consider all documents submitted by Applicant's Information Disclosure Statement pursuant to the requirements set forth in 37 C.F.R. §§ 1.97, 1.98 and MPEP, Section 609.

Turning to the requirement to elect one of four (4) species, the Examiner (Mr. Sawhney) called the undersigned "on February 3, 2005 to request an oral election." (See Office Action of February 24, 2005, page 3, paragraph 2.) The

undersigned vividly recalls discussions during the latter conversation, hence the effort "did not result in an election being made." Though by the formal response of March 24, 2005, the undersigned elected on behalf of Applicant "Species I of Figures 1-4 for prosecution on the merits." The election was made "with traverse" with reasons set forth in detail and claims 1 through 3 and 30 through 34 were identified as being generic. Claims readable on the elected species were "claims 4 through 9, 12, 15 through 29, 34, 44 and 50 through 52." As was stated by the undersigned, though the Examiner grouped the figures he provided no reasons for holding the figures illustrated the different species to be "patentably distinct." Such remains the status of this issue at this point in time because in the outstanding Office Action, the Examiner merely acknowledged Applicant's "election of Species I of figures 1-4 with traverse" and made no mention of arguments presented by the undersigned in the previous amendment. However, upon preparing the claims treated on the merits and those withdrawn, it would seem that the Examiner believes there is a patentable distinction between light-creating means in the form of an "LED" (claim 8), the inclusion of a "light pipe" (claim 9), "lens means" (claim 10), etc. Somewhat strangely, the Examiner treated claim 9 on the merits yet withdrew claim 8 when Applicant's specification at paragraph [0032] specifically states that "a conventional LED" in part defines the illuminating means 50 of elected Figure 4 which is associated with "means 55 in the form of a light tube." There is absolutely no doubt that claim 8 reads on the elected species and withdrawing the same from consideration based upon the recitation of a "LED" appears to be erroneous.

As another example, claim 12 has been withdrawn from consideration, and this claim recites "means for directing light from said light-creating means

to said light-transmitting member.” The light directing means of claim 12 is a broader recitation of the light pipe of claim 9. Why has claim 9 been examined and claim 12 withdrawn from consideration.

Independent claim 21 has also been withdrawn from consideration and this claim specifically and directly readily reads upon the species of Figures 1 through 4. Why, in the Examiner’s opinion was claim 21 apparently not considered readable on the elected species of Figures 1 through 4? Not only does independent claim 21 read on the elected species of Figures 1 through 4, but each of claims 22 through 29 depending therefrom reads upon the elected species of Figures 1 through 4.

Independent claim 30 not only reads upon the species of Figures 1 through 4 but also reads upon all of the shelves illustrated except the shelf of Figure 1. Therefore, claim 30 is sub-generic to all shelves except the shelf 610 of Figure 12 but, more importantly, most definitely reads upon the elected species of Figures 1 through 4. Therefore, examination of claim 30 and each of the claims depending therefrom which is directed to sub-generic subject matter (excluding the shelf of Figure 12) must be examined, and such action on the part of the Examiner is respectfully requested.

Claim 44 is also in independent form and also directly reads upon the elected species of Figures 1 through 4 of the drawings. If the Examiner remains of the opinion that this claim does not read upon the elected species, he is requested to advise the undersigned of his specific reasons for not treating this claim on the merits.

If in the Examiner’s opinion a “sliding shelf” is distinguishable from a cantilevered shelf, the undersigned has no objection to claim 47 and the claims depending therefrom not being treated on the merits. However, upon the

allowance of claim 30, independent claim 47 must be considered on the merits thereof, as well as the claims depending therefrom.

Independent claim 50 also reads directly upon the elected species of Figures 1 through 4. Once again, if the Examiner thinks otherwise, the undersigned would appreciate some sound analysis as to why claim 50 and the claims depending therefrom have been withdrawn.

In view of the foregoing, the undersigned requests reconsideration of the Examiner's withdrawal of claims 8, 10 through 14 and 21 through 54 and examination of those claims identified by the undersigned which are clearly readable on the elected species of Figures 1 through 4.

Should the Examiner neither explain his position as set forth at page 2 of the outstanding Office Action or upon reconsideration not examine claims readable on the species of Figures 1 through 4, he should consider the election of species petitionable, and such will promptly follow the next Office Action.

At page 3, paragraph 5, the Examiner has rejected claims 1 through 7, 9, 16 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Matyear et al. (WP 95/30970) in view of Obrock et al. (US Patent Application Pub. No.: US 2003/0038571 A1)."

The so-called "housing 95, 96" of Matyear et al. is not a "housing" as the Examiner has stated, but are instead "reflectors 95 and 96. The reflectors 95 and 96 assist in reflecting light from the lamps 30 into the side edges of the display panel 50 for illuminating the advertising material sheets 8 and 9 arranged on the display panel 50." (See page 7, lines 14-20.) The latter is fairly reflected in Figure 4. However, the undersigned will readily admit that the Matyear et al. patent does disclose a housing, but the housing is basically the frame 11 made of frame segments 12 through 14 with each frame segment

being defined by the L-shape plates and cover sections described at page 5, lines 1 through 9 of the specification and once again best illustrated in Figure 4 of the drawings. An edge of a light-transmitting panel 50 is illuminated by a florescent tube 30 in the manner evident from Figures 4 and 6 of the drawings. The frame members and/or frame L-segments thereof definitely surround the reflectors 95, 96 but do not constitute, as originally recited in claim 1, "means in the form of synthetic polymeric/copolymeric material encapsulating at least part of said housing." The Examiner states "Matyear does not specifically teaches [sic] the capsulating [sic] means, of at least a part of the housing, being made of synthetic, polymeric or copolymeric material." In actual fact, there are no "encapsulating means" whatsoever disclosed in Matyear et al. within the scope and content of claim 1, particularly as now defined "in the form of substantially homogeneous synthetic polymeric/copolymeric material molded in in situ encapsulating relationship to at least part of said housing."

Accordingly, insofar as amended claim 1 is concerned, the same is clearly allowable over the Matyear et al. publication which leaves for consideration the patent to Obrock et al. which the Examiner states "discloses an illumination device (shelf) 30 (Figures 7-9) including means 104 - end caps - enclosing edges of the shelf made from polymeric material (Figures 7-9, Para. 0008 and 0063)." The undersigned has no objection to the combination of the prior art teachings as set forth by the Examiner such that the broad concept of "end caps - enclosing edges of the shelf" which are "made from polymeric material" would be obvious. Therefore, a proper teaching of Obrock et al. under the Graham v. John Deere Co. of Kansas City, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966) conditions would involve making the frame, frame members and/or

L-segments of the Matyear et al illumination device from plastic material, **not** the reflectors 95, 96 thereof. However, the teaching as a whole or in its entirety of Obrock et al. does not render obvious the last limitation of claim 1 reciting "means in the form of substantially homogeneous synthetic polymeric/copolymeric material molded in in situ encapsulating relationship to at least part of said housing." It is clearly evident from the Obrock et al. publication that there is no end cap-to-panel encapsulation. "Polypropylene end caps are located on the remaining edges to enclose the shelf and complete the reservoir" ([0008]), and "as depicted in FIGS. 2-5, the end caps 86, 88 are preferably formed in a rectangular shape having a top 90, a left 92, a right 94, a bottom 96, a front 98 and a rear 100 surface" [0052]. At paragraph [0053] "a seal 102 is preferably located between the plate 48 and the end caps 86, 88," perhaps utilizing an "adhesive" [0054]. At paragraph [0058] the end caps 86, 88 are simply attached and it is only the top edges 120 of cantilevered beams 112, 114 which are secured to bottom edges of the end caps 86, 88 "by molding, gluing, friction fitting, encapsulating or any other suitable attachment means." The latter is an explicit teaching away from the present invention. In re Gurley, 31 USPQ2d 1130-1131:

A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.

Accordingly, based upon the prior art teachings as a whole or in their entirety of Matyear et al. and Obrock et al., the formal allowance of independent claim 1 is considered proper and would be most appreciated.

As to several dependent claims which the Examiner has rejected, the undersigned would appreciate being precisely advised the manner in which the

Examiner perceives the prior art to suggest or render obvious the subject matter of claim 4. If the combined teachings of the applied patents involve the Examiner's perception of encapsulation or encapsulating, precisely where might there be found "means for removably securing said housing parts together"? (Claim 4.)

Where in the prior art is there disclosed a "light pipe" in the combination recited in claim 9 or in the more specific combination recited in claim 16? If in Matyear et al. there is an alleged "housing 95, 96," what precisely might be the "means for securing one of said housing parts to a support," as required by the last limitation of claim 17?

At the mid-portion of page 5, the Examiner states "means 112 and 114 (Obrock, Figure 6, Para. 0058) securing the encapsulating means 18 (Matyear, Figure 4). The last limitation of claim 17 calls for "securing one of said housing parts to a support," not whatever might be meant by "means 112 and 114... securing the encapsulating means 18"... in some fashion or another.

With respect to the claims under rejection, as presently amended, each of the claims is clearly directed to unobvious subject matter, and the withdrawal of the rejection set forth beginning at page 3, paragraph 5 of the outstanding Office Action would be most appreciated.

The Examiner indicated that claim 15 was allowable and the latter and claims 18 through 20 have been placed in independent form to include therein all of the limitations of claim 1. Therefore, the formal allowance of claims 15 and 18 through 20 is believed proper and would be most appreciated.

Also presented herewith are new dependent claims 55 through 69 which depend directly or indirectly from allowable/allowed claim 15. The allowance of claims 55 through 69 would be most appreciated.

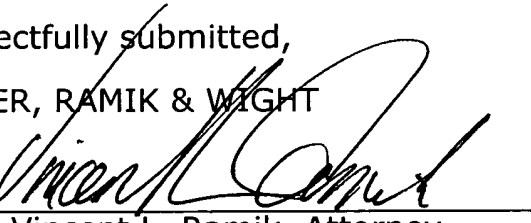
As a final note, the Examiner is requested to revisit his perception of those claims withdrawn from consideration and either (1) precisely explain any valid reasons for such withdrawal or (2) examine all claims properly readable upon the elected species of Figures 1 through 4 on the merits. For the record, should the Examiner remove any claim from its withdrawn status and re-examine the same, the undersigned considers such action a first action on the merits and should such first action entail a rejection of any claim first and newly considered, a final action is considered premature.

In view of the foregoing, favorable consideration and allowance of all claims directed to the elected species of Figures 1 through 4 is requested, particularly the allowance of all claims presently under rejection.

Respectfully submitted,

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Substitute for form 1449A/PTO		Complete if Known	
INFORMATION DISCLOSURE STATEMENT BY APPLICANT (use as many sheets as necessary)		Application Number	10/602,863
		Filing Date	6/25/2003
		First Named Inventor	Bienick
		Art Unit	2875
		Examiner Name	
Sheet 1 of 4	Attorney Docket Number		

U.S. PATENT DOCUMENTS					
Examiner Initials	Cite No.	Document Number Number - Kind Code ² (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		US2001/0008464A1	07/19/2001	Ouderkirk et al.	
		US2001/0021445A1	09/13/2001	Weber et al.	
		US2001/0034823A1	03/21/2002	Kuepper et al.	
		US2003/0038571A1	02/27/2003	Obrock et al.	
		US- 3506325	04/14/1970	Horvay	
		US- 3662381	05/09/1972	Steffens	
		US- 3737651	06/05/1973	Shute	
		US- 3754243	08/21/1973	Kaneko et al.	
		US- 4039894	08/02/1977	Gardner, III	
		US- 4112485	09/05/1978	Sutter	
		US- 4597035	06/24/1986	Lettenmeyer	
		US- 4689726	08/25/1987	Kretzschmar	
		US- 4748546	05/31/1988	Ukrainsky	
		US- 4929866	05/29/1990	Murata et al.	
		US- 4939625	07/03/1990	Olson	
		US- 5034861	07/23/1991	Sklenak et al.	
		US- 5163748	11/17/1992	Messinger	
		US- 5287252	02/15/1994	Caruso	
		US- 5301090	04/05/1994	Hed	
		US- 5309544	05/03/1994	Saxe	

FOREIGN PATENT DOCUMENTS					
Examiner Initials	Cite No.	Foreign Patent Document Country Code ³ - Number ⁴ - Kind Code ⁵ (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		EP 1076215	2/14/2001	Roland	

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		US- 5325271	06/28/1994	Hutchisson	
		US- 5353441	10/11/1994	Lazorchak	
		US- 5359503	10/25/1994	Myodo et al.	
		US- 5369555	11/29/1994	McKain et al.	
		US- 5450297	09/12/1995	Akashi et al.	
		US- 5460275	10/24/1995	Ladwig	
		US- 5502623	03/26/1996	Brotz	
		US- 5590945	01/07/1997	Simms	
		US- 5608550	03/04/1997	Epstein et al.	
		US- 5613751	03/25/1997	Parker et al.	
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		US- 5626084	05/06/1997	Kelly et al.	
		US- 5656014	08/12/1997	Rooney et al.	
		US- 5774199	06/30/1998	Ozawa	
		US- 5786665	07/28/1998	Ohtuski et al.	
		US- 5876107	03/02/1999	Parker et al.	
		US- 5894539	04/13/1999	Epstein	
		US- 5895111	04/20/1999	Santosuosso et al	
		US- 5897201	04/27/1999	Simon	

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Sheet	4	of	4
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		US- 6217188B1	04/17/2001	Wainwright et al.	
		US- 6231205B1	05/15/2001	Slessinger et al.	
		US- 6234648B1	05/22/2001	Borner et al.	
		US- 6250774B1	06/26/2001	Begemann et al.	
		US- 6255786B1	07/03/2001	Yen	
		US- 6280053B1	08/28/2001	Chien	
		US- 6282821B1	09/04/2001	Freier et al.	
		US- 6283608B1	09/04/2001	Straat	
		US- 6283612B1	09/04/2001	Hunter	
		US- 6289150B1	09/11/2001	Zarian et al.	
		US- 6292901B1	09/18/2001	Lys et al.	
		US- 6297906B1	10/02/2001	Allen et al.	
		US- 6335999B1	01/01/2002	Winston et al.	
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